

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KEON EUGENE SIMMS,

Plaintiff,

v.

STEVEN BUCHANAN, et al.,

Defendants.

Case No. 3:25-cv-05342-DGE-TLF

REPORT AND
RECOMMENDATION

Noted for September 10, 2025

This matter is before the Court on plaintiff's filing of an amended complaint pursuant to the Court's order that he file one. Dkt. 4. Plaintiff is proceeding *pro se* in this matter, which has been referred to the undersigned Magistrate Judge. *Mathews, Sec'y of H.E.W. v. Weber*, 423 U.S. 261 (1976); 28 U.S.C. § 636(b)(1)(B); Local Rule MJR 4(a). Plaintiff has also moved to proceed *in forma pauperis* ("IFP"). Dkt. 1.

For the reasons set forth below, plaintiff's amended complaint remains fatally deficient, and therefore the undersigned recommends that the Court dismiss this action without prejudice prior to service for failure to state a claim upon which relief may be granted and pursuant to the *Younger* abstention doctrine. *Younger v. Harris*, 401 U.S. 37 (1971). The Court further recommends that plaintiff's motion to proceed IFP (Dkt. 1) should be denied as moot.

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BACKGROUND

In his original complaint, plaintiff states he is a pretrial detainee at Pierce County Jail ("PCJ"); he commenced this action on April 23, 2025. Dkt. 1. Plaintiff names as defendants S. Buchanan, Sergeant at PCJ and Place, Sergeant/Courts Officer at PCJ. Dkt. 1-1. Plaintiff alleges defendants violated his right to due process and right to access the courts by refusing to allow him to testify against his previous criminal attorney at a hearing before the Washington State Bar Association on February 3, 2025. *Id.*

Plaintiff alleges that defendants' refusal to allow him to testify at the Bar Association hearing "may jeopardize his claim to ineffective assistance of counsel in a later appeal in [his] criminal case." *Id.* at 6. Plaintiff states he is seeking money damages as relief. *Id.* at 9.

By order dated June 4, 2025, the Court advised plaintiff of certain deficiencies in his complaint and directed him to either show cause or file an amended complaint curing the deficiencies by July 7, 2025. Dkt. 4. Specifically, the Court advised plaintiff that he had failed to allege facts to show his inability to testify at his former attorney's disciplinary hearing frustrated a non-frivolous direct criminal appeal, habeas corpus proceeding, or § 1983 case, and that he had failed to allege sufficient facts to show actual injury. *Id.* The Court further advised plaintiff that due to his ongoing criminal proceedings it appeared the Court should abstain from deciding his claims pursuant to *Younger v. Harris*, 401 U.S. 37 (1971). *Id.*

On July 7, 2025, plaintiff filed a proposed amended complaint. Dkt. 5. Plaintiff's amended complaint names only Steven Buchanan, Sergeant at PCJ, as a defendant.

1 *Id.* His amended complaint again alleges a denial of access to the courts due to
 2 defendant's refusal to allow him to testify "against his former criminal defense attorney
 3 at a hearing before the Washington State Bar Association, thereby obstructing his right
 4 to access the courts and jeopardizing potential future claims for ineffective assistance of
 5 counsel." *Id.* As relief, plaintiff seeks monetary damages, preliminary and permanent
 6 injunctive relief, attorneys' fees, and a declaration that defendant violated his
 7 constitutional rights. *Id.*

8 DISCUSSION

9 A. Relevant Legal Standard

10 The Court must dismiss the complaint of a prisoner proceeding *in forma pauperis*
 11 "at any time if the [C]ourt determines" that the action: (a) "is frivolous or malicious"; (b)
 12 "fails to state a claim on which relief may be granted" or (c) "seeks monetary relief
 13 against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2); 28 U.S.C.
 14 § 1915A(a), (b). A complaint is frivolous when it has no arguable basis in law or fact.
 15 *Franklin v. Murphy*, 745 F.2d 1221, 1228 (9th Cir. 1984), *abrogated on other grounds*
 16 *by Neitzke v. Williams*, 490 U.S. 319 (1989).

17 Before the Court may dismiss the complaint as frivolous or for failure to state a
 18 claim, it "must provide the [prisoner] with notice of the deficiencies of his or her
 19 complaint and an opportunity to amend the complaint prior to dismissal." *McGuckin v.*
 20 *Smith*, 974 F.2d 1050, 1055 (9th Cir. 1992), *overruled on other grounds by WMX*
 21 *Techs., Inc. v. Miller*, 104 F.3d 1133 (9th Cir. 1997); *see also Sparling v. Hoffman*
 22 *Constr., Co., Inc.*, 864 F.2d 635, 638 (9th Cir. 1988); *Noll v. Carlson*, 809 F.2d 1446,
 23 1449 (9th Cir. 1987). Leave to amend need not be granted "where the amendment
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1 would be futile or where the amended complaint would be subject to dismissal.” *Saul v.*
2 *United States*, 928 F.2d 829, 843 (9th Cir. 1991).

3 To state a claim under 42 U.S.C. § 1983, a complaint must allege: (1) the
4 conduct complained of was committed by a person acting under color of state law, and
5 (2) the conduct deprived a person of a right, privilege, or immunity secured by the
6 Constitution or laws of the United States. *Parratt v. Taylor*, 451 U.S. 527, 535 (1981).
7 Section 1983 is the appropriate avenue to remedy an alleged wrong only if both of these
8 elements are present. *Haygood v. Younger*, 769 F.2d 1350, 1354 (9th Cir. 1985).

9 B. Access to Courts

10 Plaintiff alleges defendants violated his right of access to the courts by refusing
11 to allow him to testify against his previous criminal attorney at a hearing before the
12 Washington State Bar Association. He alleges his inability to testify at the hearing may
13 jeopardize his claim to ineffective assistance of counsel in a later appeal in his criminal
14 case.

15 Prisoners have a “fundamental constitutional right of access to the courts.”
16 *Bounds v. Smith*, 430 U.S. 817, 828 (1977) *overruled on other grounds by Lewis v.*
17 *Casey*, 518 U.S. 343 (1996). The right of access to the courts applies to non-frivolous
18 direct criminal appeals, habeas corpus proceedings, and 42 U.S.C. § 1983 cases. *Lewis*
19 *v. Casey*, 518 U.S. 343 at 353 n. 3, 354–55 (1996). Furthermore, the claim is limited to
20 a prisoner’s ability to access courts and does not extend to the ability to discover legal
21 claims or effectively litigate claims once in court. *See Lewis*, 518 U.S. at 354–55;
22 *Cornett v. Donovan*, 51 F.3d 894, 898 (9th Cir. 1995) (“[W]e conclude the Supreme
23 Court has clearly stated that the constitutional right of access requires a state to provide
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1 a law library or legal assistance only during the pleading stage of a habeas or civil rights
2 action.”).

3 In addition, a plaintiff must show some actual injury resulting from a denial of
4 access to the court in order to allege a constitutional violation. See *Lewis*, 518 U.S. at
5 349. To meet the actual injury requirement, a plaintiff must demonstrate “actual
6 prejudice with respect to contemplated or existing litigation, such as the inability to meet
7 a filing deadline or to present a claim.” *Id.* at 348; *Phillips v. Hurst*, 588 F.3d 652, 655
8 (9th Cir. 2009). “Failure to show that a ‘nonfrivolous legal claim has been frustrated’ is
9 fatal to [an access to courts] claim.” *Alvarez v. Hill*, 518 F.3d 1152, 1155 n.1 (9th Cir.
10 2008) (quoting *Lewis*, 518 U.S. at 353 & n.4).

11 Here, plaintiff fails to allege facts to show his inability to testify at his former
12 attorney’s disciplinary hearing frustrated a non-frivolous direct criminal appeal, habeas
13 corpus proceeding, or § 1983 case. *Lewis*, 518 U.S. at 353 n. 3, 354–55. That is, he
14 does not allege that he has been prevented from accessing the court to litigate a direct
15 appeal, habeas corpus proceeding or § 1983 case.

16 Furthermore, plaintiff alleges his inability to testify at the hearing may jeopardize
17 his claim to ineffective assistance of counsel in a later appeal in his criminal case. But,
18 as discussed below, it appears plaintiff is a pretrial detainee, not convicted of the crimes
19 with which he is charged. Thus, plaintiff fails to allege sufficient facts to show he as
20 incurred an actual injury.

21 In sum, as alleged, neither plaintiff’s complaint nor amended complaint
22 adequately state a claim for denial of access to the courts.

23 C. *Younger* Abstention
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1 Plaintiff's claims also relate to his ongoing criminal proceedings and are barred
2 by the *Younger* abstention doctrine. *Younger*, 401 U.S. 37. Generally, federal courts will
3 not intervene in a pending criminal proceeding absent "extraordinary circumstances,
4 where the danger of irreparable harm is both great and immediate." *Younger*, 401 U.S.
5 at 45, 46. Under *Younger*, courts should abstain from interfering with pending state
6 judicial proceedings when: "(1) there is an ongoing state judicial proceeding; (2) the
7 proceeding implicates important state interests; (3) there is an adequate opportunity in
8 the state proceedings to raise constitutional challenges; and (4) the requested relief
9 seeks to enjoin or has the practical effect of enjoining the ongoing state judicial
10 proceeding." *Arevalo v. Hennessy*, 882 F.3d 763, 765 (9th Cir. 2018) (alterations
11 adopted) (citation and internal quotation marks omitted). Courts may *sua sponte*
12 consider whether *Younger* abstention is appropriate. *San Remo Hotel v. City & Cnty. of*
13 *San Francisco*, 145 F.3d 1095, 1103 n. 5 (9th Cir. 1998); see *Younger*, 401 U.S. at 40–
14 41.

15 Here, plaintiff indicates that he is a pretrial detainee and his criminal proceedings
16 are currently pending. Dkts. 1-1, 5. Court records show that plaintiff's state court
17 criminal cases are ongoing and that with respect to all but one of his pending cases
18 (case no. 22-1-00387-3) jury trial proceedings have been continued to November 4,
19 2025. *Id.* See *State v. Simms*, Pierce County Superior Court Nos. 19-1-04047-7, 21-1-
20 02032-0, 22-1-00378-4, 22-1-00382-2, 22-1-00387-3, 22-1-01184-1, 25-1-01521-3
21 (available at [Pierce County Superior Court Criminal Case 19-1-04047-7](#), [Pierce County](#)
22 [Superior Court Criminal Case 21-1-02032-0](#), [Pierce County Superior Court Criminal](#)
23 [Case 22-1-00378-4](#), [Pierce County Superior Court Criminal Case 22-1-00382-2](#), [Pierce](#)
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1 [County Superior Court Criminal Case 22-1-00387-3](#), [Pierce County Superior Court](#)
2 [Criminal Case 22-1-01184-1](#), [Pierce County Superior Court Criminal Case 25-1-01521-](#)
3 [3](#), (last visited on August 19, 2025)). With respect to Pierce County Superior Court No.
4 22-1-00387-3, the court records reflect there is a “return date” scheduled for September
5 17, 2025. See *State v. Simms*, Pierce County Superior Court No. 22-1-00387-3
6 (available at [Pierce County Superior Court Criminal Case 22-1-00387-3](#), last visited on
7 August 26, 2025).

8 Thus, the proceedings here involve a criminal prosecution implicating important
9 state interests. Furthermore, there is nothing to indicate plaintiff would be prevented
10 from raising in his state court criminal case the same issues he raises in his complaint in
11 this matter. And a finding in plaintiff’s favor – that defendant prevented plaintiff from
12 accessing the court, thereby impeding a potential ineffective assistance of counsel claim
13 – would likely have the practical effect of enjoining the ongoing state judicial proceeding.
14 Plaintiff also fails to present sufficient facts in his complaint to show extraordinary
15 circumstances where the danger of irreparable harm is both great and immediate.

16 As plaintiff brings claims here that would unduly interfere with the state criminal
17 proceeding, the Court should abstain from deciding his claims pursuant to *Younger*.
18 *Younger*, 401 U.S. 37.

19 CONCLUSION

20 Because plaintiff already has been granted the opportunity to state a viable
21 constitutional claim by filing an amended complaint – but the amended complaint
22 remains fatally deficient without any indication the deficiencies discussed above can be
23 cured – dismissal of this action without prejudice for failure to state a claim under 42
24 U.S.C. § 1983 and under the *Younger* abstention doctrine is proper. The Court further
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1 recommends that plaintiff's motion to proceed IFP (Dkt. 1) should be denied as moot. A
2 proposed order and proposed judgment are attached.

3 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall
4 have fourteen (14) days from service of this report to file written objections. *See also*
5 Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for
6 purposes of *de novo* review by the district judge, *see* 28 U.S.C. § 636(b)(1)(C), and can
7 result in a waiver of those objections for purposes of appeal. *See Thomas v. Arn*, 474
8 U.S. 140, 142 (1985); *Miranda v. Anchondo*, 684 F.3d 844, 848 (9th Cir. 2012) (citations
9 omitted). Accommodating the time limit imposed by Fed. R. Civ. P. 72(b), the Clerk is
10 directed to set the matter for consideration on **September 10, 2025**, as noted in the
11 caption.

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13 Dated this 26th day of August, 2025.

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Theresa L. Fricke
18 United States Magistrate Judge
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